



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R08-OAR-2021-0002; FRL-10021-88-Region 8]

Approval and Promulgation of Implementation Plans; North Dakota; Revisions to Air

Pollution Control Rules; Regional Haze

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a revision to the North Dakota State Implementation Plan (SIP) submitted by the State of North Dakota on November 11, 2016 and supplemented on March 15, 2021, that addresses amendments to the regional haze provisions of the North Dakota Administrative Code (NDAC). These revisions were submitted to remove certain regional haze requirements related to Best Available Retrofit Technology (BART) in the first planning period. EPA is also proposing to approve a revision to the North Dakota SIP submitted on August 3, 2020, that addresses additional amendments to the regional haze provisions of the NDAC. The 2020 SIP revision was submitted to update the incorporation by reference date for regional haze definitions, add emission reduction requirements to make reasonable progress during the second and subsequent regional haze planning periods, and revise the regional haze monitoring, recordkeeping, and reporting requirements to be applicable under the second and subsequent planning period. EPA is taking this action pursuant to section 110 and Part C of the Clean Air Act (CAA).

DATES: Written comments must be received on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R08-OAR-2021-0002, to the Federal Rulemaking Portal: <https://www.regulations.gov>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed

from www.regulations.gov. EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (i.e., on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

Docket: All documents in the docket are listed in the www.regulations.gov index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available electronically in www.regulations.gov. To reduce the risk of COVID-19 transmission, for this action we do not plan to offer hard copy review of the docket. Please email or call the person listed in the **FOR FURTHER INFORMATION CONTACT** section if you need to make alternative arrangements for access to the docket.

FOR FURTHER INFORMATION CONTACT: Jaslyn Dobrahner, Air and Radiation Division, EPA, Region 8, Mailcode 8ARD-IO, 1595 Wynkoop Street, Denver, Colorado, 80202-1129, (303) 312-6252, dobrahner.jaslyn@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document wherever “we,” “us,” or “our” is used, we mean EPA.

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I. What Action is EPA Proposing?

EPA is proposing to approve North Dakota's regional haze SIP revision submitted by the State of North Dakota on November 11, 2016, and supplemented on March 15, 2021, as discussed in sections III and V of this proposed rulemaking. Specifically, we are proposing to approve North Dakota's removal of NDAC section 33-15-25-02.1 (requirement pertaining to the submittal of a regional haze BART analysis) and section 33-15-25-03 (requirement that references the federal guidelines for BART determinations under the regional haze rule) from the regional haze provisions provided in NDAC section 33-15-25.¹

EPA is also proposing to approve a portion of North Dakota's August 3, 2020, SIP revision that addresses NDAC section 33.1-15-25 of the Air Pollution Control Rules for regional haze.²

¹ On August 6, 2018, North Dakota submitted a SIP to EPA that recodified the Air Pollution Control Rules, including those that address regional haze, from NDAC section 33-15 to NDAC section 33.1-15. EPA approved the recodification on February 5, 2019 (84 FR 1610). The recodification made the regional haze section of NDAC to be changed from section 33-15-25 to section 33.1-15-25. The 2018 SIP reflected the deletions of section 33.1-15-25-02.1 and section 33.1-15.25-03 (formerly referred to as section 33-15-25-02.1 and section 33-15-25-03).

² EPA will act on the remaining portions of the ND August 3, 2020, SIP in a future rulemaking.

Specifically, we are proposing to approve the following revisions to NDAC: section 33.1-15-25-01 which updates the incorporation by reference date for regional haze definitions; section 33.1-15-25-03 which adds emission reduction requirements to make reasonable progress for the second and subsequent planning periods; and section 33.1-15-25-04 which revises the regional haze monitoring, recordkeeping, and reporting requirements to be applicable to sources under the second and subsequent planning periods.

II. Background

A. Requirements of the Clean Air Act and EPA's Regional Haze Rule

In section 169A of the CAA, Congress created a program for protecting visibility in national parks and wilderness areas. This section of the CAA establishes “as a national goal the prevention of any future, and the remedying of any existing, impairment of visibility in mandatory Class I Federal areas which impairment results from manmade air pollution.”³

EPA promulgated a rule to address regional haze on July 1, 1999.⁴ The Regional Haze Rule revised the existing visibility regulations⁵ to integrate provisions addressing regional haze and established a comprehensive visibility protection program for Class I areas. The requirements for regional haze, found at 40 CFR 51.308 and 40 CFR 51.309, are included in

³ 42 U.S.C. 7491(a). Areas designated as mandatory Class I Federal areas consist of national parks exceeding 6,000 acres, wilderness areas and national memorial parks exceeding 5,000 acres, and all international parks that were in existence on August 7, 1977. 42 U.S.C. 7472(a). In accordance with section 169A of the CAA, EPA, in consultation with the Department of Interior, promulgated a list of 156 areas where visibility is identified as an important value. 44 FR 69122 (November 30, 1979). The extent of a mandatory Class I area includes subsequent changes in boundaries, such as park expansions. 42 U.S.C. 7472(a). Although states and tribes may designate as Class I additional areas whose visibility they consider to be an important value, the requirements of the visibility program set forth in section 169A of the CAA apply only to “mandatory Class I Federal areas.” Each mandatory Class I Federal area is the responsibility of a “Federal Land Manager.” 42 U.S.C. 7602(i). When we use the term “Class I area” in this action, we mean a “mandatory Class I Federal area.”

⁴ 64 FR 35714, 35714 (July 1, 1999) (codified at 40 CFR part 51, subpart P).

⁵ EPA had previously promulgated regulations to address visibility impairment in Class I areas that is “reasonably attributable” to a single source or small group of sources, i.e., reasonably attributable visibility impairment (RAVI). 45 FR 80084, 80084 (December 2, 1980).

EPA’s visibility protection regulations at 40 CFR 51.300 through 40 CFR 51.309.⁶ EPA revised the Regional Haze Rule on January 10, 2017.⁷

The CAA requires each state to develop a SIP to meet various air quality requirements, including protection of visibility by submitting periodic plans demonstrating how they have and will continue to make progress towards achieving their visibility improvement goals.⁸ Regional haze SIPs must assure reasonable progress toward the national goal of preventing future and remedying existing manmade visibility impairment in Class I areas. A state must submit its SIP and SIP revisions to EPA for approval.⁹ The first state plans were due in 2007 and covered the 2008-2018 planning period. State plans covering the second planning period, 2018-2028, are due on July 31, 2021. Once approved, a SIP is enforceable by EPA and citizens under the CAA; that is, the SIP is federally enforceable.

B. Best Available Retrofit Technology

Section 169A(b)(2) of the CAA requires SIPs to contain such measures as may be necessary to make reasonable progress toward meeting the national visibility goal. Section 169(b)(2)(A) specifies that one such requirement is for certain categories of existing major stationary sources built between 1962 and 1977 to procure, install, and operate BART as determined by the states through their SIPs. Under the Regional Haze Rule, states (or EPA, in the case of a FIP) are directed to conduct BART determinations for such “BART-eligible” sources—typically larger, often uncontrolled, and older stationary sources—that may reasonably be anticipated to cause or contribute to any visibility impairment in a Class I area.¹⁰ Rather than

⁶ EPA revised the Regional Haze Rule on January 10, 2017. 82 FR 3078 (January 10, 2017). Under the revised Regional Haze Rule, the requirements 40 CFR 51.308(d) and (e) apply to first implementation period SIP submissions and section 51.308(f) applies to submissions for the second and subsequent implementation periods. 82 FR 3087; see also 81 FR 26942, 26952 (May 4, 2016).

⁷ 82 FR 3078 (January 10, 2017).

⁸ 42 U.S.C. 7410(a), 7491, and 7492(a); CAA sections 110(a), 169A, and 169B.

⁹ 42 U.S.C. 7491(b)(2) and 7410.

¹⁰ 40 CFR 51.308(e). EPA designed the Guidelines for BART Determinations Under the Regional Haze Rule (Guidelines) 40 CFR appendix Y to part 51 “to help States and others (1) identify those sources that must comply with the BART requirement, and (2) determine the level of control technology that represents BART for each source.” Guidelines, section I.A. section II of the Guidelines describes the four steps to identify BART sources, and section III explains how to identify BART sources (i.e., sources that are “subject to BART”).

requiring source-specific BART controls, states also have the flexibility to adopt an emissions trading program or other alternative program as long as the alternative will achieve greater reasonable progress toward natural visibility conditions than BART.¹¹

C. Long-Term Strategy and Reasonable Progress Requirements

In addition to the BART requirements, the CAA's visibility protection provisions also require that states' regional haze SIPs contain a "long-term (ten to fifteen years) strategy for making reasonable progress toward meeting the national goal...."¹² The long-term strategy must address regional haze visibility impairment for each mandatory Class I area within the state and for each mandatory Class I area located outside the state that may be affected by emissions from the state. It must include the enforceable emission limitations, compliance schedules, and other measures necessary to achieve the reasonable progress goals.¹³ The reasonable progress goals, in turn, are calculated for each Class I area based on the control measures states have selected by analyzing the four statutory "reasonable progress" factors, which are "the costs of compliance, the time necessary for compliance, the energy and non-air quality environmental impacts of compliance, and the remaining useful life of any existing source subject to such requirement."¹⁴ Thus, the four reasonable progress factors are considered by a state in setting the reasonable progress goal by virtue of the state having first considered them, and certain other factors listed in § 51.308(d)(3) of the Regional Haze Rule, when deciding what controls are to be included in the long-term strategy. Then, the numerical levels of the reasonable progress goals are the predicted visibility outcome of implementing the long-term strategy in addition to ongoing pollution control programs stemming from other CAA requirements.

Unlike BART determinations, which are required only for the first regional haze planning period SIPs,¹⁵ states are required to submit updates to their long-term strategies, including

¹¹ 40 CFR 51.308(e)(2). *WildEarth Guardians v. EPA*, 770 F.3d 919, 934 (10th Cir. 2014).

¹² 42 U.S.C. 7491(b)(2)(B).

¹³ 40 CFR 51.308(d)(3).

¹⁴ 42 U.S.C. 7491(g)(1); 40 CFR 51.308(d)(1)(i).

¹⁵ Under the Regional Haze Rule, SIPs are due for each regional haze planning period, or implementation period. The terms "planning period" and "implementation period" are used interchangeably in this document.

updated reasonable progress analyses and reasonable progress goals, in the form of SIP revisions on July 31, 2021, and at specific intervals thereafter.¹⁶ In addition, each state must periodically submit a report to EPA at five-year intervals beginning five years after the submission of the initial regional haze SIP, evaluating the state's progress towards meeting the reasonable progress goals for each Class I area within the state.¹⁷

D. Consultation with Federal Land Managers

The Regional Haze Rule requires that a state consult with Federal Land Managers (FLMs) before adopting and submitting a required SIP or SIP revision. Further, when considering a SIP revision, a state must include in its proposal a description of how it addressed any comments provided by the FLMs.¹⁸

E. Monitoring, Recordkeeping, and Reporting

The CAA requires that SIPs, including regional haze SIPs, contain elements sufficient to ensure emission limits are practically enforceable. CAA section 110(a)(2) states that the monitoring, recordkeeping, and reporting provisions of states' SIPs must: "(A) include enforceable emissions limitations and other control measures, means, or techniques (including economic incentives such as fees, marketable permits, and auctions of emissions rights), as well as schedules and timetables for compliance, as may be necessary or appropriate to meet the applicable requirements of this chapter;... (C) include a program to provide for the enforcement of the measures described in subparagraph (A), and regulation of the modification and construction of any stationary source within the areas covered by the plan as necessary to assure that national ambient air quality standards are achieved, including a permit program as required in parts C and D of this subchapter;... (F) require, as may be prescribed by the Administrator – (i) the installation, maintenance, and replacement of equipment, and the implementation of other

¹⁶ 40 CFR 51.308(f). The deadline for the 2018 SIP revision was moved to 2021. 82 FR 3078 (January 10, 2017); see also 40 CFR 51.308(f). Following the 2021 SIP revision deadline, the next SIP revision is due in 2028. 40 CFR 51.308(f).

¹⁷ Id. §51.308(g); §51.309(d)(10).

¹⁸ 40 CFR 51.308(i).

necessary steps, by owners or operators of stationary sources to monitor emissions from such sources, (ii) periodic reports on the nature and amounts of emissions and emissions-related data from such sources, and (iii) correlation of such reports by the State agency with any emissions limitations or standards established pursuant to this chapter, which reports shall be available at reasonable times for public inspection.”¹⁹

Accordingly, 40 CFR part 51, subpart K, Source Surveillance, requires the SIP to provide for monitoring the status of compliance with the regulations in the SIP, including “[p]eriodic testing and inspection of stationary sources,”²⁰ and “legally enforceable procedures” for recordkeeping and reporting.²¹ Furthermore, 40 CFR part 51, appendix V, Criteria for Determining the Completeness of Plan Submissions, states in section 2.2 that complete SIPs contain: “(g) Evidence that the plan contains emission limitations, work practice standards and recordkeeping/reporting requirements, where necessary, to ensure emission levels”; and “(h) Compliance/enforcement strategies, including how compliance will be determined in practice.”²²

F. Regulatory and Legal History for North Dakota Regional Haze

On March 3, 2010, North Dakota submitted a SIP that addressed regional haze requirements under 40 CFR 51.308 for the first regional haze planning period. The State submitted a supplement to the March 3, 2010 submittal on July 27, 2010, and a SIP amendment on July 28, 2011 (collectively, the “2010 Regional Haze SIP”). The State’s 2010 Regional Haze SIP was submitted to meet the requirements of the CAA and our rules for the regional haze program. On April 6, 2012, EPA partially approved and partially disapproved North Dakota’s Regional Haze SIP and issued a Federal Implementation Plan (FIP) to address the disapproved portions of North Dakota’s regional haze.²³ Among other items, we approved the incorporation of North Dakota’s regional haze regulatory requirements found in NDAC sections 33-15-25-01, 33-15-25-02, 33-15-25-03, and 33-15-25-04

¹⁹ 42 U.S.C. 7410(a)(2)(A), (C), and (F).

²⁰ 40 CFR 51.212.

²¹ Id. §51.214.

²² 40 CFR part 51, appendix V.

²³ 77 FR 20894 (April 6, 2012).

pertaining to regional haze definitions, the analysis, installation, and operation and maintenance of BART, BART guidelines, and monitoring, recordkeeping, and reporting.

Subsequently, several petitioners challenged EPA's disapproval of North Dakota's 2010 Regional Haze SIP and issuance of the 2012 FIP in the United States Court of Appeals for the Eighth Circuit. On September 23, 2013, the Eighth Circuit concluded that EPA properly disapproved portions of the State's 2010 Regional Haze SIP and remanded and vacated portions of EPA's FIP.^{24,25}

III. EPA's Evaluation of North Dakota's Regional Haze SIP Revisions

On November 11, 2016 we received from North Dakota SIP revisions that included amendments to NDAC section 33-15-25 (also known as section 33.1-15-25)²⁶ addressing regional haze. On March 15, 2021, we received a supplemental submission to the 2016 SIP. On August 3, 2020, we received from North Dakota a SIP revision that addressed additional amendments to NDAC section 33.1-15-25 addressing regional haze. The following is a discussion of our evaluation.

A. November 11, 2016 Submittal and March 15, 2021 Supplement

In the November 11, 2016, SIP submittal supplemented on March 15, 2021, North Dakota removed NDAC sections 33-15-25-02.1 and 33-15-25-03 (currently referred to as NDAC sections 33.1-15-25-02.1 and 33.1-15-25-03)²⁷ pertaining to the submission and guidelines for BART requirements, respectively.²⁸ Specifically, North Dakota removed NDAC section 33.1-15-25-02.1 which required owners and operators of any existing stationary facility as defined in 40

²⁴ *North Dakota v. United States EPA*, 730 F.3d 750 (8th Cir. 2013), *cert. denied*, 134 S. Ct. 2662 (2014).

²⁵ The Eighth Circuit concluded that EPA properly disapproved portions of the State's 2010 Regional Haze SIP and upheld portions of EPA's FIP. However, the court remanded and vacated EPA's FIP promulgating an emission limit of 0.13 lb/MMbtu (30-day rolling average) for Coal Creek Station.

²⁶ EPA approved the recodification of the Air Pollution Control Rules, including those that address regional haze, from NDAC section 33-15 to NDAC section 33.1-15. See 84 FR 1610 (February 5, 2019). The recodification changed the regional haze section of NDAC from section 33-15-25 to 33.1-15-25.

²⁷ In 2019, EPA approved North Dakota's recodification of NDAC section 33-15 to 33.1-15 (84 FR 1610, February 5, 2019). Hereinafter, we will refer to the current NDAC citation.

²⁸ SIP submittal received by EPA on November 11, 2016 with a letter dated October 27, 2016, from Governor Jack Dalrymple, State of North Dakota to Shaun McGrath, Regional Administrator, EPA Region 8. In addition, North Dakota submitted a letter dated March 15, 2021 supplementing the November 11, 2016 SIP for the NDAC section 33-15-25-02.1 and 33-15-25-03.

CFR 51.301 that contributes to visibility impairment in a class I federal area to submit, within nine months after being notified by the department, a regional haze BART analysis to the State. In conjunction, North Dakota also removed section 33.1-15-25-03 which referenced the July 6, 2005, version of the federal guidelines contained in 40 CFR part 51, appendix Y for preparing BART determinations.

According to the State, these subsections were eliminated because they are no longer requisite. Indeed, we proposed to approve the remaining outstanding BART determination for NO_x at Coal Creek Station on April 26, 2018.²⁹ With the submission of a BART analysis and subsequent BART determination for Coal Creek Station completed and submitted to EPA, we agree with the State's determination that owners and operators of BART sources within the State of North Dakota have completed and submitted required BART analyses and determinations for the first planning period of the regional haze rule, thereby negating the need for these provisions to remain in the SIP. Of importance, the State did not remove BART provisions related to the installation (NDAC section 33.1-15-25-02.2) and operation and maintenance of BART (NDAC section 33.1-15-25-02.3) which provides for the continued compliance with the regional haze rule requirements related to the first planning period. Furthermore, the State can rely on its authorities in NDAC section 23.1-06-04(e), (h), and (j) to require an updated BART analysis for Coal Creek Station, if needed.³⁰ Thus, we propose to approve the removal of NDAC sections 33.1-15-25-02.1 and 33.1-15-25-03³¹ related to the submission of and guidelines for BART requirements, respectively.

B. August 3, 2020 Submittal

²⁹ 83 FR 18248.

³⁰ North Dakota Century Code (NDCC) section 23.1-06-04(e) Issues orders necessary to effectuate the purpose of this chapter and enforce the orders by all appropriate administrative and judicial procedures; NDCC section 23.1-06-04(h) Formulate and adopt emission control requirements for the prevention, abatement, and control of air pollution in this state including achievement of ambient air quality standards; NDCC section 23.1-06-04(j) Require the owner and operator of a regulated air contaminant source to establish and maintain records; make reports; install, use, and maintain monitoring equipment or methods; sample emissions in accordance with those methods at designated locations and intervals, and using designated procedures; and provide other information as may be required.

³¹ Referenced as NDAC section 33-15-25-02.1 and section 33-15-25-03 in the November 11, 2016 North Dakota SIP.

On August 3, 2020, North Dakota submitted amendments to NDAC section 33.1-15-25-01 updating the date of the Code of Federal Regulations (CFR) found at 40 CFR 51.301 which the State incorporated by reference to reflect the updated July 1, 2019 edition of the CFR. We are proposing to approve this revision because it incorporates by reference EPA's rule provisions.

In addition, North Dakota added NDAC section 33.1-15-25-03 to North Dakota's regional haze requirements establishing the framework for requiring emission control measures to make reasonable progress towards the State's visibility goal for second and subsequent regional haze planning periods. Under this new rule the owner or operator of an existing stationary source, or group of sources shall implement emission reduction measures to make reasonable progress, as determined in accordance with federal requirements and required in a SIP revision developed by the department. Additionally, the rule requires the measures be: (1) implemented within a reasonable timeframe after EPA approves the SIP revision; and (2) properly operated and maintained. The rule also specifies that emission reduction measures and compliance deadlines shall be determined on a source-by-source basis and included in the State's SIP. The regional haze requirements found in NDAC section 33.1-15-25-03 are consistent with the federal requirements found at 40 CFR 51.308(f)(2), *Long-term strategy for regional haze*, which requires enforceable emission limitations, compliance schedules, and other measures as necessary to make reasonable progress. Therefore, we are proposing to approve the addition of NDAC section 33.1-15-25-03 into the State's regional haze requirements.

Finally, North Dakota's revised NDAC section 33.1-15-25-04 to broaden the applicability of this section to make monitoring, recordkeeping, and reporting requirements applicable to sources under the second and subsequent planning periods of the regional haze program. Here, the State expanded the applicability of the rule to include "groups of sources" and the installation of "emission reduction measures to make reasonable progress." These revisions are consistent the federal regional haze regulations at 40 CFR 51.308(f)(2), *Long-term strategy for regional haze*, which recommends states consider evaluating groups of sources, in

addition to other types of source, when determining what emission reduction measures are necessary to make reasonable progress. Therefore, we propose to approve these revisions.

C. Consultation with Federal Land Managers

There are two Class I areas in the State of North Dakota: Theodore Roosevelt National Park and Lostwood National Wildlife Refuge Wilderness Area. The National Park Service manages Theodore Roosevelt National Park. The United States Fish and Wildlife Service manage the Lostwood National Wildlife Refuge Wilderness Area. The Regional Haze Rule grants the FLMs a special role in the review of regional haze implementation plans, summarized in Section II.D of this preamble. Under 40 CFR 51.308(i)(2), North Dakota was obligated to provide the FLMs with an opportunity for consultation in development of the State's proposed SIP revisions. North Dakota provided the FLMs with notice and access to the proposed revisions to NDAC section 33.1-15-25 prior to the public hearings held on November 10, 2015, and February 7, 2020.³² The FLMs did not provide any comments on the proposed revisions.

IV. Clean Air Act Section 110(l)

Under CAA section 110(l), EPA cannot approve a plan revision “if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress (as defined in section 7501 of this title), or any other applicable requirement of this chapter.”³³ The previous sections of the document explain how the proposed SIP revisions will comply with applicable regional haze requirements and general implementation plan requirements and further strengthen North Dakota's regional haze regulations in accordance with the revised regional haze rule for the second and subsequent planning periods while maintaining regional haze

³² The public hearing associated with the November 11, 2016, revisions was held on November 10, 2015 (refer to November 11, 2016 SIP submittal, page 8). The public hearing associated with the August 3, 2020 revisions was held on February 7, 2020 (refer to August 3, 2020 SIP submittal, page 10).

³³ Note that “reasonable further progress” as used in CAA section 110(l) is a reference to that term as defined in section 301(a) (i.e., 42 U.S.C. 7501(a)), and as such means reductions required to attain the National Ambient Air Quality Standards (NAAQS) set for criteria pollutants under section 109. This term as used in section 110(l) (and defined in section 301(a)) is *not* synonymous with “reasonable progress” as that term is used in the regional haze program. Instead, section 110(l) provides that EPA cannot approve plan revisions that interfere with regional haze requirements (including reasonable progress requirements) insofar as they are “other applicable requirement[s]” of the CAA.

requirements and associated emission control measures for the first planning period. Therefore, we propose to find that these revisions satisfy section 110(l) by not interfering with any applicable requirement concerning attainment and reasonable further progress or any other applicable requirement under section 110 of the CAA.

V. Summary of EPA’s Proposed Action

In this action, EPA is proposing to approve SIP amendments to North Dakota Air Pollution Control Rules, shown in Table 1, submitted by the State of North Dakota on November 11, 2016, and supplemented March 15, 2021, and August 3, 2020.

Table 1 - List of North Dakota Amendments that EPA is Proposing to Approve

Amended Sections in the November 11, 2016 Submittal, Supplemented March 15, 2021, Proposed for Approval
NDAC section 33-15-25-02, ³⁴ NDAC section 33-15-25-03 ³⁵
Amended Sections in the August 3, 2020 Submittal Proposed for Approval
NDAC section 33.1-15-25-01, NDAC section 33.1-15-25-03, NDAC section 33.1-15-25-04

VI. Incorporation by Reference

In this document, EPA is proposing to include regulatory text in an EPA final rule that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is proposing to incorporate by reference NDAC as described in section III. of this preamble. EPA has made, and will continue to make, these materials generally available through www.regulations.gov (refer to docket EPA-R08-OAR-2021-0002).

VII. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA’s role is to approve state choices, provided

³⁴ Since North Dakota’s NDAC recodification in 2018, section 33-15-25-02.1 is referred to as section 33.1-15-25-02.1.

³⁵ Since North Dakota’s NDAC recodification in 2018, section 33-15-25-03 is referred to as section 33.1-15-25-03.

that they meet the criteria of the CAA. Accordingly, this action merely proposes to approve state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the proposed rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Greenhouse gases, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: March 23, 2021.

Debra H. Thomas,
Acting Regional Administrator,
Region 8.

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